

**Bulletin Number: CHIRO-14-2007**

**HISTORIC PRESERVATION**

In 2006, the FDIC issued its revised Statement of Policy Regarding the National Historic Preservation Act of 1966 (“NHPA”). As set out clearly in the Statement of Policy (“SOP”), banks must comply with the NHPA and its implementing regulations when submitting applications for deposit insurance for de novo institutions, applications to establish domestic branches, and applications to relocate domestic branches or main offices.

Section 106 of the NHPA requires banks to engage in a consultation process, known as the Section 106 process, to determine whether the proposed application will adversely affect an historic property. Furthermore, if the proposed application would adversely affect an historic property, the consultation process is used to attempt to minimize or avoid any adverse effects on historic properties. The consultation process typically involves consulting with the State Historic Preservation Office in the state where the new branch or main office is to be located. The consultation process may also include tribal authorities that may have an interest in the location or surrounding properties, local governmental authorities, as well as members of the public, and entities such as local historic groups.

It is absolutely imperative that banks not modify or change the property for a proposed office prior to completing the Section 106 consultation process. As noted in the SOP, the NHPA prohibits a federal agency from granting a license to an applicant who, with the intent to avoid the requirements of the NHPA, intentionally significantly adversely affects an historic property, unless the federal agency makes a finding, after consulting with the Advisory Council on Historic Preservation, that the circumstances justify granting the license. The Advisory Council on Historic Preservation is an independent federal agency charged with promoting the preservation, enhancement and productive use of our nation’s historic resources. This means that a bank could potentially jeopardize the approval of the application if it makes changes to the proposed location prior to completion of the Section 106 consultation process. Even if the FDIC ultimately approves the application, a modification of the property prior to completion of the Section 106 process greatly delays the approval of the application. Typically, the FDIC will investigate the reasons behind the premature modification of the property, will evaluate the modifications and their effect on any historic properties, and may consult with the Advisory Council on its conclusions. The FDIC’s experience is that this process can delay an application at least three to four months. Of course, as noted by the SOP, if the FDIC were to determine that the changes to the property significantly adversely

affected an historic property and were made with the intent to circumvent the requirements of the NHPA, the approval of the application would be jeopardized.

The SOP outlines some of the modifications that should not occur prior to completion of the Section 106 process, which include:

- demolition or modification of existing buildings (external or internal);
- excavation or tree or brush-clearing of the land;
- construction of any new structure;
- introduction of any visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
- neglect of a property that causes its deterioration;
- transfer, lease or sale of a property or any portion of the property by the applicant without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

Banks should also be aware that the actions of third parties, such as contractors or lessors, in modifying a property can similarly affect their applications, especially when the bank is in a position to control or dictate the third party's actions as it relates to the property.

Insured depository institutions whose primary federal regulator (PFR) is not the FDIC should contact their PFR for further guidance and information. If you have any questions with respect to the information contained in this message, please contact us by e-mail at [scans@fdic.gov](mailto:scans@fdic.gov) or call us at the FDIC's Bankers' Hotline at (312) 382-6926.